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FIRST REPRINT

S.B. 362

SENATE BILL NO. 362—SENATOR HARDY

MARCH 19, 2019

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions concerning the placement of persons with dementia in a residential facility for groups. (BDR 40-611)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to residential facilities; requiring the administrator of a residential facility for groups to ensure that certain assessments of residents are conducted; requiring a resident with severe dementia to be placed in a facility that meets certain requirements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the State Board of Health to adopt separate regulations governing the licensing of facilities for the care of adults during the day and residential facilities for groups which provide care to persons with Alzheimer's disease. (NRS 449.0302) **Section 4** of this bill requires those regulations to also apply to such facilities which provide care to persons with other severe dementia. **Section 1** of this bill requires the administrator of a residential facility for groups to annually: (1) cause a physician to conduct a physical examination of each resident of the facility; and (2) conduct an assessment of the history of each resident. If the physical examination, the assessment of resident history or the observations of certain persons indicate that a resident requires a secure facility or a facility with a high staff-to-resident ratio, **section 1** requires the administrator to cause a physician to conduct an assessment of the condition and needs of the resident. If the physician determines that the resident suffers from dementia to an extent that the resident may be a danger to himself or herself or others if not placed in a secure unit or a facility with a high staff-to-resident ratio, **section 1** requires any residential facility in which the resident is placed to meet the requirements prescribed by the Board for a facility which provides care to persons with Alzheimer's disease or other severe dementia. **Sections 2, 3 and 5-8** of this bill make conforming changes.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 449 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The administrator of a residential facility for groups shall:

(a) Annually cause a physician to conduct a physical examination of each resident of the facility;

(b) Annually conduct an assessment of the history of each resident of the facility, which must include, without limitation, an assessment of the condition and daily activities of the resident during the immediately preceding year; and

(c) Cause a physician to conduct an assessment of the condition and needs of a resident of the facility to determine whether the resident meets the criteria prescribed in paragraph (a) of subsection 2:

(1) Upon admission of the resident to the facility; and

(2) If a physical examination, assessment of the history of a resident or the observations of the administrator or staff of the facility or the family of the resident indicate that the resident may meet those criteria.

2. If, as a result of an assessment conducted pursuant to paragraph (c) of subsection 1, the physician determines that the resident:

(a) Suffers from dementia to an extent that the resident may be a danger to himself or herself or others if the resident is not placed in a secure unit or a facility that assigns not less than one staff member for every six residents, any residential facility for groups in which the resident is placed must meet the requirements prescribed by the Board pursuant to subsection 2 of NRS 449.0302 for the licensing and operation of residential facilities for groups which provide care to persons with Alzheimer's disease or other severe dementia.

(b) Does not suffer from dementia as described in paragraph (a), the resident may be placed in any residential facility for groups.

Sec. 2. NRS 449.029 is hereby amended to read as follows:

449.029 As used in NRS 449.029 to 449.240, inclusive, **and section 1 of this act**, unless the context otherwise requires, "medical facility" has the meaning ascribed to it in NRS 449.0151 and includes a program of hospice care described in NRS 449.196.

Sec. 3. NRS 449.0301 is hereby amended to read as follows:

449.0301 The provisions of NRS 449.029 to 449.2428, inclusive, **and section 1 of this act** do not apply to:



1 1. Any facility conducted by and for the adherents of any
2 church or religious denomination for the purpose of providing
3 facilities for the care and treatment of the sick who depend solely
4 upon spiritual means through prayer for healing in the practice of
5 the religion of the church or denomination, except that such a
6 facility shall comply with all regulations relative to sanitation and
7 safety applicable to other facilities of a similar category.

8 2. Foster homes as defined in NRS 424.014.

9 3. Any medical facility, facility for the dependent or facility
10 which is otherwise required by the regulations adopted by the Board
11 pursuant to NRS 449.0303 to be licensed that is operated and
12 maintained by the United States Government or an agency thereof.

13 **Sec. 4.** NRS 449.0302 is hereby amended to read as follows:

14 449.0302 1. The Board shall adopt:

15 (a) Licensing standards for each class of medical facility or
16 facility for the dependent covered by NRS 449.029 to 449.2428,
17 inclusive, *and section 1 of this act* and for programs of hospice
18 care.

19 (b) Regulations governing the licensing of such facilities and
20 programs.

21 (c) Regulations governing the procedure and standards for
22 granting an extension of the time for which a natural person may
23 provide certain care in his or her home without being considered a
24 residential facility for groups pursuant to NRS 449.017. The
25 regulations must require that such grants are effective only if made
26 in writing.

27 (d) Regulations establishing a procedure for the indemnification
28 by the Division, from the amount of any surety bond or other
29 obligation filed or deposited by a facility for refractive surgery
30 pursuant to NRS 449.068 or 449.069, of a patient of the facility who
31 has sustained any damages as a result of the bankruptcy of or any
32 breach of contract by the facility.

33 (e) Any other regulations as it deems necessary or convenient to
34 carry out the provisions of NRS 449.029 to 449.2428, inclusive **H**,
35 *and section 1 of this act.*

36 2. The Board shall adopt separate regulations governing the
37 licensing and operation of:

38 (a) Facilities for the care of adults during the day; and

39 (b) Residential facilities for groups,

40 ➔ which provide care to persons with Alzheimer's disease **H** *or*
41 *other severe dementia, as described in paragraph (a) of subsection*
42 *2 of section 1 of this act.*

43 3. The Board shall adopt separate regulations for:

44 (a) The licensure of rural hospitals which take into consideration
45 the unique problems of operating such a facility in a rural area.



(b) The licensure of facilities for refractive surgery which take into consideration the unique factors of operating such a facility.

(c) The licensure of mobile units which take into consideration the unique factors of operating a facility that is not in a fixed location.

4. The Board shall require that the practices and policies of each medical facility or facility for the dependent provide adequately for the protection of the health, safety and physical, moral and mental well-being of each person accommodated in the facility.

5. In addition to the training requirements prescribed pursuant to NRS 449.093, the Board shall establish minimum qualifications for administrators and employees of residential facilities for groups. In establishing the qualifications, the Board shall consider the related standards set by nationally recognized organizations which accredit such facilities.

6. The Board shall adopt separate regulations regarding the assistance which may be given pursuant to NRS 453.375 and 454.213 to an ultimate user of controlled substances or dangerous drugs by employees of residential facilities for groups. The regulations must require at least the following conditions before such assistance may be given:

(a) The ultimate user's physical and mental condition is stable and is following a predictable course.

(b) The amount of the medication prescribed is at a maintenance level and does not require a daily assessment.

(c) A written plan of care by a physician or registered nurse has been established that:

(1) Addresses possession and assistance in the administration of the medication; and

(2) Includes a plan, which has been prepared under the supervision of a registered nurse or licensed pharmacist, for emergency intervention if an adverse condition results.

(d) Except as otherwise authorized by the regulations adopted pursuant to NRS 449.0304, the prescribed medication is not administered by injection or intravenously.

(e) The employee has successfully completed training and examination approved by the Division regarding the authorized manner of assistance.

7. The Board shall adopt separate regulations governing the licensing and operation of residential facilities for groups which provide assisted living services. The Board shall not allow the licensing of a facility as a residential facility for groups which provides assisted living services and a residential facility for groups shall not claim that it provides "assisted living services" unless:



(a) Before authorizing a person to move into the facility, the facility makes a full written disclosure to the person regarding what services of personalized care will be available to the person and the amount that will be charged for those services throughout the resident's stay at the facility.

(b) The residents of the facility reside in their own living units which:

(1) Except as otherwise provided in subsection 8, contain toilet facilities;

(2) Contain a sleeping area or bedroom; and

(3) Are shared with another occupant only upon consent of both occupants.

(c) The facility provides personalized care to the residents of the facility and the general approach to operating the facility incorporates these core principles:

(1) The facility is designed to create a residential environment that actively supports and promotes each resident's quality of life and right to privacy;

(2) The facility is committed to offering high-quality supportive services that are developed by the facility in collaboration with the resident to meet the resident's individual needs;

(3) The facility provides a variety of creative and innovative services that emphasize the particular needs of each individual resident and the resident's personal choice of lifestyle;

(4) The operation of the facility and its interaction with its residents supports, to the maximum extent possible, each resident's need for autonomy and the right to make decisions regarding his or her own life;

(5) The operation of the facility is designed to foster a social climate that allows the resident to develop and maintain personal relationships with fellow residents and with persons in the general community;

(6) The facility is designed to minimize and is operated in a manner which minimizes the need for its residents to move out of the facility as their respective physical and mental conditions change over time; and

(7) The facility is operated in such a manner as to foster a culture that provides a high-quality environment for the residents, their families, the staff, any volunteers and the community at large.

8. The Division may grant an exception from the requirement of subparagraph (1) of paragraph (b) of subsection 7 to a facility which is licensed as a residential facility for groups on or before July 1, 2005, and which is authorized to have 10 or fewer beds and



1 was originally constructed as a single-family dwelling if the
2 Division finds that:

3 (a) Strict application of that requirement would result in
4 economic hardship to the facility requesting the exception; and

5 (b) The exception, if granted, would not:

6 (1) Cause substantial detriment to the health or welfare of
7 any resident of the facility;

8 (2) Result in more than two residents sharing a toilet facility;
9 or

10 (3) Otherwise impair substantially the purpose of that
11 requirement.

12 9. The Board shall, if it determines necessary, adopt
13 regulations and requirements to ensure that each residential facility
14 for groups and its staff are prepared to respond to an emergency,
15 including, without limitation:

16 (a) The adoption of plans to respond to a natural disaster and
17 other types of emergency situations, including, without limitation,
18 an emergency involving fire;

19 (b) The adoption of plans to provide for the evacuation of a
20 residential facility for groups in an emergency, including, without
21 limitation, plans to ensure that nonambulatory patients may be
22 evacuated;

23 (c) Educating the residents of residential facilities for groups
24 concerning the plans adopted pursuant to paragraphs (a) and (b); and

25 (d) Posting the plans or a summary of the plans adopted
26 pursuant to paragraphs (a) and (b) in a conspicuous place in each
27 residential facility for groups.

28 10. The regulations governing the licensing and operation of
29 facilities for transitional living for released offenders must provide
30 for the licensure of at least three different types of facilities,
31 including, without limitation:

32 (a) Facilities that only provide a housing and living
33 environment;

34 (b) Facilities that provide or arrange for the provision of
35 supportive services for residents of the facility to assist the residents
36 with reintegration into the community, in addition to providing a
37 housing and living environment; and

38 (c) Facilities that provide or arrange for the provision of alcohol
39 and drug abuse programs, in addition to providing a housing and
40 living environment and providing or arranging for the provision of
41 other supportive services.

42 ➡ The regulations must provide that if a facility was originally
43 constructed as a single-family dwelling, the facility must not be
44 authorized for more than eight beds.



11. As used in this section, "living unit" means an individual private accommodation designated for a resident within the facility.

Sec. 5. NRS 449.160 is hereby amended to read as follows:

449.160 1. The Division may deny an application for a license or may suspend or revoke any license issued under the provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 of this act* upon any of the following grounds:

(a) Violation by the applicant or the licensee of any of the provisions of NRS 439B.410 or 449.029 to 449.245, inclusive, *and section 1 of this act*, or of any other law of this State or of the standards, rules and regulations adopted thereunder.

(b) Aiding, abetting or permitting the commission of any illegal act.

(c) Conduct inimical to the public health, morals, welfare and safety of the people of the State of Nevada in the maintenance and operation of the premises for which a license is issued.

(d) Conduct or practice detrimental to the health or safety of the occupants or employees of the facility.

(e) Failure of the applicant to obtain written approval from the Director of the Department of Health and Human Services as required by NRS 439A.100 or as provided in any regulation adopted pursuant to NRS 449.001 to 449.430, inclusive, *and section 1 of this act* and 449.435 to 449.531, inclusive, and chapter 449A of NRS if such approval is required.

(f) Failure to comply with the provisions of NRS 449.2486.

2. In addition to the provisions of subsection 1, the Division may revoke a license to operate a facility for the dependent if, with respect to that facility, the licensee that operates the facility, or an agent or employee of the licensee:

(a) Is convicted of violating any of the provisions of NRS 202.470;

(b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360, 244.3603 or 268.4124; or

(c) Is ordered by the appropriate governmental agency to correct a violation of a building, safety or health code or regulation but fails to correct the violation.

3. The Division shall maintain a log of any complaints that it receives relating to activities for which the Division may revoke the license to operate a facility for the dependent pursuant to subsection 2. The Division shall provide to a facility for the care of adults during the day:

(a) A summary of a complaint against the facility if the investigation of the complaint by the Division either substantiates the complaint or is inconclusive;



(b) A report of any investigation conducted with respect to the complaint; and

(c) A report of any disciplinary action taken against the facility. ➡ The facility shall make the information available to the public pursuant to NRS 449.2486.

4. On or before February 1 of each odd-numbered year, the Division shall submit to the Director of the Legislative Counsel Bureau a written report setting forth, for the previous biennium:

(a) Any complaints included in the log maintained by the Division pursuant to subsection 3; and

(b) Any disciplinary actions taken by the Division pursuant to subsection 2.

Sec. 6. NRS 449.163 is hereby amended to read as follows:

449.163 1. In addition to the payment of the amount required by NRS 449.0308, if a medical facility, facility for the dependent or facility which is required by the regulations adopted by the Board pursuant to NRS 449.0303 to be licensed violates any provision related to its licensure, including any provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, *and section 1 of this act*, or any condition, standard or regulation adopted by the Board, the Division, in accordance with the regulations adopted pursuant to NRS 449.165, may:

(a) Prohibit the facility from admitting any patient until it determines that the facility has corrected the violation;

(b) Limit the occupancy of the facility to the number of beds occupied when the violation occurred, until it determines that the facility has corrected the violation;

(c) If the license of the facility limits the occupancy of the facility and the facility has exceeded the approved occupancy, require the facility, at its own expense, to move patients to another facility that is licensed;

(d) Impose an administrative penalty of not more than \$5,000 per day for each violation, together with interest thereon at a rate not to exceed 10 percent per annum; and

(e) Appoint temporary management to oversee the operation of the facility and to ensure the health and safety of the patients of the facility, until:

(1) It determines that the facility has corrected the violation and has management which is capable of ensuring continued compliance with the applicable statutes, conditions, standards and regulations; or

(2) Improvements are made to correct the violation.

2. If the facility fails to pay any administrative penalty imposed pursuant to paragraph (d) of subsection 1, the Division may:



(a) Suspend the license of the facility until the administrative penalty is paid; and

(b) Collect court costs, reasonable attorney's fees and other costs incurred to collect the administrative penalty.

3. The Division may require any facility that violates any provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, **and section 1 of this act** or any condition, standard or regulation adopted by the Board to make any improvements necessary to correct the violation.

4. Any money collected as administrative penalties pursuant to paragraph (d) of subsection 1 must be accounted for separately and used to administer and carry out the provisions of NRS 449.001 to 449.430, inclusive, **and section 1 of this act**, 449.435 to 449.530, inclusive, and 449.760 and chapter 449A of NRS to protect the health, safety, well-being and property of the patients and residents of facilities in accordance with applicable state and federal standards or for any other purpose authorized by the Legislature.

Sec. 7. NRS 449.240 is hereby amended to read as follows:

449.240 The district attorney of the county in which the facility is located shall, upon application by the Division, institute and conduct the prosecution of any action for violation of any provisions of NRS 449.029 to 449.245, inclusive **H**, **and section 1 of this act**.

Sec. 8. NRS 654.190 is hereby amended to read as follows:

654.190 1. The Board may, after notice and an opportunity for a hearing as required by law, impose an administrative fine of not more than \$10,000 for each violation on, recover reasonable investigative fees and costs incurred from, suspend, revoke, deny the issuance or renewal of or place conditions on the license of, and place on probation or impose any combination of the foregoing on any licensee who:

(a) Is convicted of a felony relating to the practice of administering a nursing facility or residential facility or of any offense involving moral turpitude.

(b) Has obtained his or her license by the use of fraud or deceit.

(c) Violates any of the provisions of this chapter.

(d) Aids or abets any person in the violation of any of the provisions of NRS 449.029 to 449.2428, inclusive, **and section 1 of this act**, as those provisions pertain to a facility for skilled nursing, facility for intermediate care or residential facility for groups.

(e) Violates any regulation of the Board prescribing additional standards of conduct for licensees, including, without limitation, a code of ethics.

(f) Engages in conduct that violates the trust of a patient or resident or exploits the relationship between the licensee and the patient or resident for the financial or other gain of the licensee.



2. If a licensee requests a hearing pursuant to subsection 1, the Board shall give the licensee written notice of a hearing pursuant to NRS 233B.121 and 241.034. A licensee may waive, in writing, his or her right to attend the hearing.

3. The Board may compel the attendance of witnesses or the production of documents or objects by subpoena. The Board may adopt regulations that set forth a procedure pursuant to which the Chair of the Board may issue subpoenas on behalf of the Board. Any person who is subpoenaed pursuant to this subsection may request the Board to modify the terms of the subpoena or grant additional time for compliance.

4. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

5. The expiration of a license by operation of law or by order or decision of the Board or a court, or the voluntary surrender of a license, does not deprive the Board of jurisdiction to proceed with any investigation of, or action or disciplinary proceeding against, the licensee or to render a decision suspending or revoking the license.

Sec. 9. This act becomes effective on July 1, 2019.

